

The Functions of the Court and the Jury

Members of the Jury:

You have heard all of the evidence and the argument of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your jobs, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be unfairly influenced by any person's race, color, religion, national ancestry, or gender.

Nothing I say now, and nothing I said or did during the trial is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Parties are Entitled to Equal Consideration

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. Private individuals and municipal corporations are entitled to the same fair consideration. All persons and municipal corporations stand equal before the law and are to be dealt with as equals in a court of justice.

Note Taking

Any notes you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not your notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

The Evidence

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from deposition, the exhibits admitted in evidence, and stipulations.

What is Not Evidence

Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Common Sense Inferences

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look to one fact and conclude from that fact that another fact exists. In law, we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

Witness Credibility

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know things that the witness testified about; the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Definition of “direct” and “circumstantial” evidence

Some of you may have heard the phrases “direct” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non-existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Jury Should Consider All Evidence

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

Impeachment of Witness

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that she or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give that testimony.

Burden of Proof

In a civil law suit like this one, the burden is on the Plaintiff to prove every essential element of her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that Plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received into evidence, regardless of who may have produced them.

If the proof establishes each essential element of Misty Henry’s claim by a preponderance of the evidence, then you should find for Misty Henry as to that claim.

If the proof fails to establish any essential element of Misty Henry’s claim by a preponderance of the evidence, then you should find for the City of Chicago as to that claim.

Elements of Sexual Harassment

In this case, Plaintiff claims that she was sexually harassed at work by her male co-workers. Specifically, Plaintiff claims that she was subjected to a hostile work environment due to her sex. To succeed on this claim, Plaintiff must prove seven propositions by a preponderance of the evidence.

1. Plaintiff was subjected to a hostile work environment based on inappropriate comments and/or inappropriate touching by her male co-workers;
2. The conduct was unwelcome;
3. The conduct was because of Plaintiff's sex;
4. At the time the conduct occurred, Plaintiff believed that the conduct made her work environment hostile or abusive;
5. The conduct was sufficiently severe or pervasive that a reasonable person in Plaintiff's position would have found her work environment to be hostile or abusive;
6. Defendant knew or should have known about the conduct; and
7. Defendant did not take reasonable steps to correct the situation.

If you find that Plaintiff has proved by a preponderance of the evidence each of the propositions required of her, then you must find for Plaintiff. However, if you find that Plaintiff did not prove by a preponderance of the evidence each of the propositions required of her, then you must find for Defendant.

Unwelcome Conduct

Conduct is “unwelcome” if Plaintiff did not solicit or invite the conduct and regarded the conduct as undesirable or offensive.

**Conduct Was Sufficiently Severe or Pervasive that a Reasonable Person in Misty Henry's
Position Would Find Misty Henry's Work Environment to Be Hostile or Abusive**

To decide whether a reasonable person would find Misty Henry's work environment hostile or abusive, you must look at all the circumstances. These circumstances may include the frequency of the conduct; its severity; its duration; whether it was physically threatening or humiliating; and whether it unreasonably interfered with the Misty Henry's work performance. No single factor is required in order to find a work environment hostile or abusive.

Conduct that amounts only to ordinary socializing in the workplace, such as occasional horseplay, sexual flirtation, sporadic or occasional use of abusive language, gender related jokes, and occasional teasing, does not constitute an abusive or hostile environment. Only conduct amounting to a material change in the terms and conditions of employment amounts to an abusive or hostile work environment.

Compensatory Damages

The law permits you to award Plaintiff compensatory damages in an amount that will reasonably compensate her for any humiliation, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and/or stress, that she experienced as a result of a hostile work environment.

You may award damages only for injuries that Plaintiff proves by a preponderance of the evidence were the direct result of gender-based harassment that she experienced.

The damages you award must be fair compensation, no more and no less. No evidence of the monetary value of such intangible things as humiliation, pain and suffering, and the like has been or needs to be introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award you make should be fair in light of the evidence presented at trial.

Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant.

Damages are Not Considered if You Find in the City of Chicago's Favor

If you find that Misty Henry has failed to prove all of her claims, then you will not consider the question of damages.

Selection of Foreperson - Verdict

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in Court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Communication with Court

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer. If any communication is made, it should not indicate your numerical division.

Disagreement Among Jurors

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous. You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Employer Liability in Co-Worker Harassment Claims

The City of Chicago can be held responsible for the conduct of its employees only if it knew or should have known about the harassment and failed to take prompt reasonable steps to remedy the harassment once it was put on notice.

If the City of Chicago took prompt, reasonable steps to discover and rectify the alleged harassment of its employees, it has discharged its legal duty. The City of Chicago's response to the alleged harassment must be reasonably calculated to prevent further harassment under the particular facts and circumstances of the case at the time the allegations are made.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MISTY HENRY,)	
)	
Plaintiff,)	
)	No. 03 C 5122
v.)	
)	
CITY OF CHICAGO,)	
)	
Defendant.)	

VERDICT FORM

Hostile work environment by co-workers

We, the jury, find as follows on Plaintiff Misty Henry's claim against the City of Chicago that she was subjected to a hostile work environment by her co-workers:

_____ For Misty Henry

_____ For City of Chicago

If you answer "for Misty Henry" proceed to the next page and answer the question of damages. If you answer "for City of Chicago," please sign the verdict form.

Damages

(To be answered only if you found for Misty Henry)

We, the jury, find damages as follows:

\$ _____ Emotional pain, suffering, inconvenience, mental anguish,
loss of enjoyment of life, and stress, if any

Please sign and date this form after you have completed your deliberations.

Foreperson

Date: _____
